

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SUSANNE R. HURD,

Plaintiff,

v.

USIC LLC, CENTURYLINK,
MEDIACOM, and CITY OF VOLGA,

Defendants.

8:21CV295

ORDER

This matter is before the Court on pro se plaintiff Susanne R. Hurd's (also known as Susanne Becker, "Becker") Motion for Appeal (Filing No. 6). Liberally construing her filing as a notice of appeal, or in the alternative, a motion to appeal in forma pauperis ("IFP"),¹ the Court issued an Order on September 16, 2021 (Filing No. 9) notifying her that she must either (1) pay the required filing fee for a notice of appeal or (2) submit the appropriate form affidavit to the Court so it may consider her ability to proceed in forma pauperis, *see* Fed. R. App. P. 24(a). The Court gave her fourteen days to do so. That time has now passed, and Becker has not done either.

To the extent Becker has moved to appeal in forma pauperis, any such request is denied for failing to submit the appropriate form affidavit, which the Court previously provided to her. *See* Fed. R. App. P. 24(a)(2). Federal Rule of Appellate Procedure 24(a)(5) provides that Becker "may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of" this Order. *Id.* Her motion to the Eighth Circuit Court of Appeals must include "the district court's statement of reasons for its action" in denying her motion to appeal in forma pauperis and a completed form affidavit.

¹Becker did pay the initial filing fee in this action.

Becker's motion could also be construed as a notice of appeal, and in the Eighth Circuit "appellate jurisdiction is primarily an issue for the appellate court," *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999), so her appeal will be submitted to the Eighth Circuit for disposition. *See also* Fed. R. App. P. 3(a)(2) ("An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.").

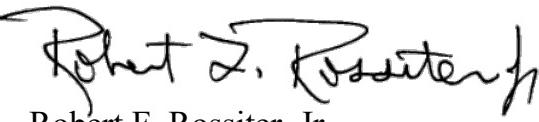
After Becker filed her Motion for Appeal and the Court issued its order instructing her to pay the filing fee or submit the appropriate IFP form affidavit, she filed a Motion for Leave (Filing No. 10), seeking to amend her complaint. But Becker has clearly indicated her intent to appeal, and this Court lacks jurisdiction to consider her motion for leave to amend her complaint. *State ex rel. Nixon*, 164 F.3d at 1106 ("Once a notice of appeal is filed, the district court is divested of jurisdiction over matters on appeal."). Accordingly,

IT IS ORDERED:

1. Becker's Motion for Appeal (Filing No. 6), construed as a motion to proceed in forma pauperis, is denied. The Clerk of Court is directed to send her the appropriate form affidavit.
2. The Clerk of Court is directed to submit Becker's filing as a notice of appeal to the Eighth Circuit.
3. Becker's Motion for Leave (Filing No. 10) is denied without prejudice.

Dated this 5th day of October 2021.

BY THE COURT:



Robert F. Rossiter, Jr.
Chief United States District Judge